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COMMISSION PROPOSES TO ABOLISH CONCEPT OF DIETETIC FOODS

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Report Highlights:

The European Commission published a proposal to revise the legislative framework currently in place for dietetic foods. This proposal will have a direct impact on specialized dietetic food producers. Although the proposal does not ban any products, products will need to be re-labeled or reformulated. The deadline for submitting comments under the WTO TBT Agreement is October 20, 2011.

General Information:**COMMISSION PROPOSES TO ABOLISH CONCEPT OF DIETETIC FOODS**

On June 20, 2011 the European Commission published a proposal to revise the legislative framework currently in place for dietetic foods. Although the proposal to repeal the dietetic foods legislation does not ban any products, products will need to be re-labeled and reformulated as required. As the proposal will likely cause uncertainty for dietetic food producers post recommends submitting comments under the WTO TBT Agreement. The proposal was notified to the WTO on July 20, 2011 under WTO Notification G/TBT/N/EEC/384. The deadline for submitting comments is October 20, 2011.

Rationale for proposing new legislation

The Commission is proposing to abolish the concept of dietetic foods to close loopholes in the existing EU legislation and limit the possibility for companies to do “legislative shopping”. Under the current rules, originally adopted in 1987 and codified in Directive 2009/39/EC, dietetic foods or foods for particular nutritional uses are defined as “foods that are different from foods for normal consumption and are specially manufactured products intended to satisfy the particular nutritional requirements of specific categories of the population”. Different Member State interpretation of this broad definition in combination with overlapping and occasionally contradicting newer pieces of legislation such as the Nutrition and Health Claims Regulation are increasingly distorting trade on the EU market.

According to the impact assessment published in tandem with the proposal, some companies exploit the dietetic foods legislation to circumvent the much stricter requirements of the nutrition & health claims regulation. Under the current dietetic food legislation, “dietetic suitability statements” are subject to a simple national notification procedure while the Nutrition and Health Claims Regulation requires a centralized EU pre-market authorization of a claim based on a scientific evaluation by the European Food Safety Agency (EFSA).

What is changing?

The Commission proposal repeals the general rules on dietetic foods set out in Directive 2009/39/EC but maintains the existing composition and labeling requirements for foods intended for infants and young children up to three years old and foods for special medical purposes. The proposal consolidates the three existing lists of substances that may be added to these foods such as vitamins, minerals and other substances into a single EU list.

Foods other than infant-formula, follow-on formula and foods for special medical purposes will be treated as “normal” foods unless they make a nutrition or health claim. Foods such as protein bars, energy drinks, gluten-free and lactose-free foods which used to be covered by the dietetic foods legislation will need to comply with the requirements set out in the Nutrition and Health Claims Regulation (Regulation 1924/2006) and the Fortified Foods Regulation (Regulation 1925/2006) as

appropriate.

Impact on U.S. products

The proposal will have a direct impact on specialized dietetic food producers. Products will need to be re-labeled and reformulated as required. Products that are labeled in conformity with the existing rules on dietetic foods will be allowed to remain on the market during a transitional period of two years. After the transitional period expires, “suitability dietetic statements” will disappear and dietetic foods producers wishing to continue stating similar benefits must ensure that their products comply with the Nutrition and Health Claims Regulation. In order to comply with the Nutrition and Health Claims Regulation, a dossier must be submitted to EFSA for scientific evaluation. Based on EFSA’s evaluation, the Commission then decides to authorize or reject the claim. The Nutrition and Health Claims Regulation, adopted in 2006, is not completely finalized. The Commission is still working on a proposal to establish “nutrient profiles” that foods need to meet in order to carry claims.

Next Steps

The proposal was submitted to the Council and the European Parliament on June 24, 2011. Under the ordinary legislative procedure formerly known as co-decision, both institutions jointly have to agree on the proposed rules. According to the Commission, the proposal could be adopted by the end of 2012 which means that products would have to comply with the new rules by the end of 2014.

Links

- Commission proposal for a regulation on food intended for infants and young children and on food for special medical purposes COM(2011)353: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0353:FIN:EN:PDF>
- Impact Assessment accompanying the Commission proposal: <http://register.consilium.europa.eu/pdf/en/11/st12/st12099-ad01.en11.pdf>